IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18268 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LALJIBHAI SAGARBHAI RABARI - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR BP MUNSHI for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5
Mr. P.D. Bhate, AGP for Respondent(s) : 1,
None for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 06/09/2005

ORAL JUDGMENT

By way of this petition under Article 227 of the Constitution of India, (though termed as one under Article 226 of the Constitution of India), the petitioners have challenged the legality and validity

of the judgment and order passed by the Gujarat Revenue Tribunal dated 14th October 2004 in Revision Application No. TEN.BA. 933/96 in dismissing the Revision Application confirming the order passed by the Deputy Collector (Land Reforms), Mehsana, dated 30th August 1996 in Tenancy Review Case No. 101 of 1994.

2. The dispute is with regard to agricultural land bearing Block No. 1003/B admeasuring 5 acres and 8 gunthas situate in Village Jornag, Taluka-Mehsana vested in Government under the orders dated 20th October 1992 in Tenancy Case No. 84-C/98/92 passed by the Mamlatdar and ALT, Mehsana. It appears from the record that the land in question was required to be disposed of after following due procedure as required under Section 84-C of the Bombay Tenancy & Agricultural Lands Act [hereinafter referred to as 'the Act']. It appears from the record that the land in question was granted/allotted in favour of father of the petitioners, i.e., Rabari Sagarbhai Jesangbhai by the Mamlatdar and ALT, Mehsana for consideration and purchase price of Rs. 2,850 under Section 84-C of

the Act. It is required to be noted that he was the sole applicant and no other application was on record and/or received by the Mamlatdar and ALT and therefore the land was granted in his favour. The order passed by the Mamlatdar & ALT, Mehsana, dated 18.2.1993 came to be taken under suo motu revision/review by the Deputy Collector (Land Reforms), Mehsana and after giving an opportunity to the said grantee/allottee the Deputy Collector (Land Reforms), Mehsana by order dated 30th August 1996 quashed and set aside the order passed by the Mamlatdar and ALT, Mehsana dated 18.2.1993 by which the land was allotted in favour of the said Rabari Sagarbhai Jesangbhai under Section 84-C(4) of the Act by holding that proper procedure as required to be followed under Section 84-C of the Act read with Rule 21 of the Bombay Tenancy & Agricultural Land Rules [hereinafter referred to as 'the Rules'] have not been followed which is mandatory in nature. Being aggrieved and dissatisfied with the order passed by the Deputy Collector (Land Reforms), Mehsana dated 30th August 1996 in Tenancy Review Case No. 101/94, the petitioners, as heirs of deceased Rabari

Sagarbhai Jesangbhai, preferred Revision Application No. TEN.BA.933/96 and the Gujarat Revenue Tribunal by judgment and order dated 14th October 2004 has dismissed the said Revision Application confirming the order passed by the Deputy Collector (Land Reforms), Mehsana and directed the Mamlatdar and ALT, Mehsana to initiate proceedings for fresh disposal of the land after giving vide publicity as provided in Rule 21 of the Rules. Being aggrieved and dissatisfied with the same, the petitioners have preferred the present Special Civil Application under Article 227 of the Constitution of India.

3. Shri BP Munshi, learned advocate appearing for the petitioners, has vehemently submitted that both the authorities below, inclusive of Gujarat Revenue Tribunal ['GRT' for short] have materially erred in holding that the mandatory provision as required under Rule 21 of the Rules have not been followed. It is submitted that wide publicity was given and the applicant being the sole applicant the land was allotted in favour of the applicant, i.e., father of the petitioners and there was no illegality

committed by the Mamlatdar and ALT while disposing of the land in his favour under Section 84-C(4) of the Act. It is further submitted by him that apart from it even the Deputy Collector could not have exercised the power after a period of one year and therefore when the order passed by the Deputy Collector being after the prescribed period of limitation the GRT has materially erred in confirming the said order. Shri Munshi has further submitted that in view of the fact that they are in possession of the land in question since many years even while exercising the power under Article 226 of the Constitution of India the sale in their favour be regularised. It is, therefore, requested to allow the present Special Civil Application. Shri Munshi has relied upon the judgment of the learned Single Judge of this Court in the case of Thakorebhai Tribhovandas Rao & Ors. Vs. State of Gujarat & Ors., reported in 36(1) GLR Page 636, as well as in the case of Valjibhai Jagjivanbhai Vs. State of Gujarat, reported in 2005 (2) GLH 34.

4. Heard the learned advocates appearing on

behalf of the parties. At the outset, it is required to be noted that the applicant was the sole-applicant and on that basis the land came to be allowed in his favour. The Deputy Collector (Land Reforms), Mehsana as well as the GRT on going through the record from the Mamlatdar's office have specifically come to the conclusion and given the finding as borne out from the record that no wide publicity was given as required under Rule 21 of the Rules and therefore mandatory procedure has not been complied with. There are concurrent finding of facts given by both the authorities below with regard to not giving wide publicity and non-compliance of the procedure as required under Rule 21 of the Rules and those findings are given on appreciation of evidence and after consideration of the record and the proceedings from the Mamlatdar. This Court, while exercising power under Section 227 of the Constitution of India, is not required to reappreciate the same. As such there is no jurisdictional error committed by the GRT and/or the Deputy Collector (Land Reforms), Mehsana, which require interference of this Court in exercise of power under Article 227 of the Constitution of

India.

5. So far as the contention on behalf of the petitioners that the Deputy Collector (Land Reforms), Mehsana, ought not to have exercised suo motu powers after a period of one year is concerned, it is required to be noted that first of all such an objection/contention was not raised either before the Deputy Collector (land Reforms), Mehsana and/or before the GRT. Under the circumstances, it is not open for the petitioners to contend the same for the first time before this Court in a petition under Article 227 of the Constitution of India. Even otherwise, it appears from the pleadings that no particulars are given by the petitioners when the show cause notice came to be issued by the Deputy Collector (Land Reforms) while exercising suo motu powers. It appears from the record that the order passed under Section 84-C(4) came to be passed by the Mamlatdar & ALT, Mehsana by order dated 18.2.1993 and that it appears that the petitioners paid the amount of sale consideration on 28.6.1993 and thereafter the certificate came to be issued in their favour. It

also appears from the record that the proceedings/suo motu revision by the Deputy Collector (Land Reforms), Mehsana, is numbered as 'Review Case No. 101 of 1994'. Therefore the show cause notice must have been issued somewhere in the middle of the year 1994 itself. Therefore when no particulars are given by the petitioners nor there is any pleading in the petition giving particulars as to when the suo motu powers came to be exercised and which requires a detailed examination, the petitioners cannot be permitted to raise this contention for the first time before this Court in a petition under Article 227 of the Constitution of India, more particularly when the same has not been raised by the petitioners either before the Deputy Collector (Land Reforms), Mehsana and/or before the G.R.T. Under the circumstances, the judgment relied upon by the petitioner in the case of Thakorebhai Tribhovandas Rao & Ors. Vs. State of Gujarat & Ors.(Supra) will not be helpful to the petitioners in the facts and circumstances of the case. So far as the reliance placed upon the Judgment of the Division Bench of this Court in the case of Valjibhai Jagjivanbhai Vs. State of Gujarat

(Supra) is concerned, considering the facts and circumstances of the case, it cannot be said that the powers are exercised by the Deputy Collector after unreasonable period. Even otherwise, as held by the Deputy Collector as well as by the G.R.T., mandatory provision as required under Rule 21 has not been followed as there was only one application and that too by the applicant, i.e., father of the petitioners was made. In other words, the entire transaction took place in a suspicious manner. Considering the aforesaid facts and circumstances of the case, it cannot be said that there is any illegality committed by the Deputy Collector [Land Reforms], Mehsana and/or by the Gujarat Revenue Tribunal. So far as the contention on behalf of the petitioners regarding exercise of power under Article 226 of the Constitution of India and regularization of sale in favour of the petitioners as they are in possession of the land in question since 1996 is concerned, it is required to be noted that the sale in favour of the petitioners came to be set aside within a reasonable time, and that only because of the stay order granted by the G.R.T., and/or by this Court the

possession of the petitioners came to be protected. Therefore, merely because pursuant to the interim orders passed by the Court the petitioners are in possession of the land in question, that ground cannot be made the basis to regularize the sale in their favour. Further, merely because there was a delay in disposal of the proceedings by the Gujarat Revenue Tribunal and possession of the petitioners came to be protected by the interim order, that itself is also not a ground to further confer any right, much less an equitable right, in favour of the petitioners.

6. For the reasons stated above, there is no substance in the present Special Civil Application which deserves dismissal and the same is accordingly dismissed.

[M.R. Shah, J.]

RMR.